

GENERAL TERMS & CONDITIONS FOR PROFESSIONAL CHARTER VESSELS

These are the General Terms and Conditions for Professional Charter Vessels of HISWA Vereniging (the Dutch Association of Entrepreneurs in the Watersports Industry). These terms and conditions have been drawn up in consultation with the Consumers' Association (*Consumentenbond*) and ANWB in the context of the Self-Regulation Coordination Group of the Social and Economic Council (*SEK*). They apply exclusively to members of HISWA Association. In case of misuse of the terms and conditions, HISWA Vereniging will take appropriate action. The terms and conditions were filed with the Registry of the District Court of Amsterdam on the 4th of July 2018 under file number 72/2018.

ARTICLE 1 – DEFINITIONS

The following definitions apply in these terms and conditions:

- Entrepreneur: a natural person or a legal entity who/which concludes a contract with a consumer. The entrepreneur involved is a member of HISWA Vereniging.
- Consumer: a person who concludes a contract for a boat trip led by a captain, including a stay on board of a ship.
- Captain: the person in charge of the ship that the agreed boat trip is made with.
- Guest: a person who, at the invitation of the consumer and with the permission of the entrepreneur, is on board of the ship that the agreed boat trip is made with.
- Ship: the ship that is named in the contract, or an equivalent ship.
- Contract: the agreement whereby the entrepreneur undertakes to organize a boat trip for the consumer.
- Boat trip: sailing with the ship and the stay on board during the period identified in the contract.
- Electronic: by e-mail or website.
- Dispute Resolution Committee: the Water Recreation Dispute Resolution Committee, located in The Hague.

All amounts stated in these general terms and conditions include VAT.

ARTICLE 2 – APPLICABILITY OF THESE TERMS AND CONDITIONS

- These terms and conditions apply to all contracts that the entrepreneur concludes with the consumer.
- Articles 12, 13 and 14 do not apply if the boat trip:
 - does not involve an overnight stay or covers a period not longer than 24 hours, or
 - is offered on an incidental basis without a profit motive to a limited group of consumers.

In such case the entrepreneur does not need to send along with the offer the legal standard information form for package trips (see Article 3, paragraph 4).
- Articles 16 and 17 do not apply if the consumer acts in connection with his profession or business.
- These terms and conditions apply between the entrepreneur and the consumer. The consumer must alert his guests to these general terms and conditions. The consumer shall hold the entrepreneur harmless against claims instituted by guests against the entrepreneur insofar as such liability towards the consumer would be excluded.
- These terms and conditions also serve with regard to all individual persons and legal entities that the entrepreneur makes or has made use of, in the widest sense of the word, in concluding and/or implementing the contract.
- The contract is strictly subject to these terms and conditions. Should the consumer apply any other conditions, then these are explicitly rejected by the entrepreneur. This does not apply if the parties have explicitly agreed otherwise in writing.

ARTICLE 3 – THE OFFER

- An advertisement, brochure or website of the entrepreneur is an invitation to enter negotiations.
- If the entrepreneur makes a personal offer to the consumer, then he will do so in writing or electronically.
- The written or electronic offer must be signed and dated. If a period of validity is mentioned in the offer, then the entrepreneur may not change or withdraw the offer within that period. If no period is mentioned, then the entrepreneur may not change or withdraw the offer within 14 days after the signature date.
- The entrepreneur shall include in the offer a full and accurate description of the services offered. This must minimally include the following:
 - the nature, content and scope of the services to be provided;
 - the total price of the boat trip. For individual bookings this is a price per person, for group bookings a price per group;
 - the percentage of the price that must be paid in advance;
 - the method of payment;
 - the date and moment of embarking and disembarking;
 - the maximum number of guests per ship;
 - for individual bookings: the required minimum number of persons and the possibility for the entrepreneur to cancel the boat trip if this number is not achieved. The period within which such cancellation may take place is to be mentioned.

In addition, the entrepreneur includes with the offer:

 - the legal standard information form for package trips;
 - a copy of these general terms and conditions if the consumer has not received these earlier.

ARTICLE 4 – THE CONTRACT

- A contract is effected as soon as the consumer accepts the entrepreneur's offer. In the case of electronic acceptance of the offer, the entrepreneur will send an electronic confirmation to the consumer.
- Every contract will be established either in writing or electronically.
- In case of a written contract, the entrepreneur must always provide the consumer with a copy.

ARTICLE 5 – PAYMENT CONDITIONS

- The consumer must pay the invoice no later than 14 days after receipt thereof, but in any case by the starting date of the boat trip. The invoice may be paid at the office of the entrepreneur or by transferring the amount involved to a bank account to be identified by the entrepreneur.
- If the consumer does not pay in time, he will be in default even without a notice to that effect by the entrepreneur. The entrepreneur will nonetheless send one payment reminder after the payment deadline has passed without charging any cost. The consumer is therein reminded of the default and given the opportunity as yet to pay the invoice within 14 days. The payment reminder will state the extrajudicial collection charges that the consumer shall owe in case of late payment.
- If the 14-day period referred to in paragraph 2 has expired without the consumer having paid, then the entrepreneur is authorised to demand payment of the amount due without any further default notice being required. All reasonable related extrajudicial charges may be charged to the consumer. Maximum amounts apply for this, as stated in the Extrajudicial Collection Costs (Fees) Decree. Subject to legal changes, these maximum amounts are:
 - 15% on the first €2,500, with a minimum of €40;
 - 10% on the next €2,500;
 - 5% on the next €5,000;
 - 1% on the next €190,000;
 - 0.5% on the remainder, with a maximum of € 6,775.

ARTICLE 6 – CANCELLATION

- If the consumer wishes to cancel the contract, he must then notify the entrepreneur of this as soon as possible in writing or electronically. The date on which the entrepreneur receives the cancellation will be regarded as the cancellation date.
- If the consumer cancels the contract, he will owe the entrepreneur a fixed compensation amount. This includes compensation for the stay on the ship plus compensation for the catering and other services. The compensation for the ship amounts to:
 - 15% of the agreed price upon cancellation up to 6 months prior to departure;

- 20% of the agreed price upon cancellation up to 5 months prior to departure;
- 30% of the agreed price upon cancellation up to 4 months prior to departure;
- 40% of the agreed price upon cancellation up to 3 months prior to departure;
- 50% of the agreed price upon cancellation up to 2 months prior to departure;
- 75% of the agreed price upon cancellation up to 1 month prior to departure;
- 90% of the agreed price upon cancellation up to 1 day prior to departure;
- 100% of the agreed price upon cancellation on the day of departure.

The compensation for the catering and other services amounts to:

- 15% of the agreed price upon cancellation up to 2 months prior to departure;
- 25% of the agreed price upon cancellation up to 1 month prior to departure;
- 50% of the agreed price upon cancellation up to 2 weeks prior to departure;
- 75% of the agreed price upon cancellation up to 1 week prior to departure;
- 95% of the agreed price upon cancellation up to 1 day prior to departure;
- 100% of the agreed price upon cancellation on the day of departure.

If the actual damage that the entrepreneur suffers as a result of the cancellation is clearly more than 15% higher or lower than the amount stated above, then the consumer must pay that higher or lower amount. This amount may not be more than the total price that is contractually agreed. Damage is defined as the actual loss suffered plus loss of profits.

- The consumer may ask the entrepreneur to allow personal substitution until 7 days prior to departure. The substitute must comply with all terms and conditions pertaining to the contract. The consumer and the substitute are jointly and severally liable for payment of the amount still owed for the boat trip, substitution costs amounting to €50 and any extra reasonable charges.
- If public authorities have issued a negative travel advice for the area where the boat trip is to take place, then the consumer may cancel the contract at no cost. This also applies in case of a negative travel advice for the port of departure and/or arrival.
- The entrepreneur may cancel the contract if he is unable to carry out the contract due to unavoidable and unusual circumstances. This is subject to the condition that he notifies the consumer of this immediately and prior to the start of the boat trip.
- The entrepreneur may dissolve the contract if the number of registrations for the boat trip is less than the required minimum number of participants that he announced prior to the booking. The entrepreneur may only do this within the cancellation deadline that is stated in the offer.
- In the situations mentioned in paragraphs 5 and 6 above, the entrepreneur shall fully refund all amounts already paid by the consumer before the boat trip. He does not need to pay any compensation for damage.

ARTICLE 7 – RIGHTS AND OBLIGATIONS OF THE ENTREPRENEUR

- The entrepreneur guarantees that the ship and the crew meet all legal requirements and that the ship is minimally provided with proper safety equipment.
- The sailing route is determined by the entrepreneur and/or the captain in consultation with the consumer, unless the parties have agreed otherwise.
- The entrepreneur and/or the captain is authorised at all times to alter the sailing route because of actual or expected nautical and/or meteorological circumstances. This includes changing the place of departure and/or arrival or temporarily not sailing out. Nautical and/or meteorological circumstances include situations such as weather conditions, tides, blockage of waterways and the condition of the ship.
- In the situations listed in paragraph 3 the entrepreneur and/or the captain will try to find another solution in consultation with the consumer. Any extra costs are, insofar as these are reasonable, payable by the consumer. The entrepreneur and/or captain decides whether the solution opted for can be implemented within reason.
- In the unlikely event that the ship and/or the captain that have been agreed are not available, the entrepreneur may then deploy an equivalent other ship and/or other captain. If this is not possible, he may dissolve the contract. This is only allowed if the unavailability of the ship and/or the captain is the result of a circumstance that a conscientious entrepreneur could not have prevented.
- The entrepreneur may raise the price up to 20 days prior to the start of the boat trip in case of increases of transportation costs (including fuel costs) or of taxes and levies due. He must notify the consumer in writing, indicating how the price increase has been calculated. If the increase is more than 8%, the consumer has the right to cancel the contract at no cost. This must be done within 10 days after receipt of the written notification.
- If the costs referred to in paragraph 6 drop after the conclusion of the contract and prior to the start of the trip, then the consumer is entitled to a price reduction. The entrepreneur may in such case deduct the administrative expenses incurred from the repayment amount.
- The entrepreneur may cancel the contract if the number of registrations is less than the required minimum number of participants that he indicated prior to the booking. He may only do this within the cancellation deadline that is stated in the offer.
- The entrepreneur shall alert the consumer to the obligation mentioned in Article 8, paragraph 9.
- The entrepreneur will make arrangements with the consumer regarding the payment of port fees, bridge tolls, lock tolls, pilotage fees, local taxes and other levies such as tourist taxes and fuel costs.

ARTICLE 8 – RIGHTS AND OBLIGATIONS OF THE CONSUMER

- The consumer is to provide the entrepreneur or the latter's representative with a list of the names of guests, including the telephone numbers of contact persons, no later than by the start of the boat trip.
- At the end of the agreed boating period, the consumer must ensure that the ship is in the same condition as at the start of the boating period, insofar as this lies within his sphere of influence.
- If the consumer has not adhered to the provision stated in paragraph 2, then the entrepreneur is authorised to restore the ship, at the consumer's expense, to the condition that it was in at the start of the agreed boating period. This does not apply if the related expenses are covered by insurance.
- The consumer and his guests shall at all times follow the instructions of the entrepreneur and/or captain and/or other crew members. This applies in particular with regard to the provisions and instructions pertaining to order and safety.
- The consumer is to allow the captain and any crew members who are present the possibility to make use of the catering on board. The consumer will not ask for payment or consideration for this. If no food is served on board, then the rental price will include an amount for catering of the captain and crew.
- The luggage of the consumer and guests may not cause any hinder due to its size and place of storage. This is for the captain to judge. Luggage that is permitted includes normally required articles for personal use that are packed in a suitcase, handbag, duffel bag or backpack and can be carried by hand in one go. This does not include food and drinks.
- The consumer and/or his guests may under no circumstances take on board or carry on themselves any hazardous substances, weapons, drugs or smuggled goods.
- Pets may not be taken or kept on board without explicit prior permission.
- The consumer shall point out to his guests those provisions in these terms and conditions that apply to them.

ARTICLE 9 – DISSOLUTION AND SUSPENSION

- Should one of the parties fail in its obligations under this contract, then the opposite party is authorised to suspend its own obligations or to dissolve the contract. Such party not do so if the failure does not justify suspension or dissolution considering its special nature or limited impact.
- A party may in any case dissolve the contract if:
 - the opposite party has been declared bankrupt;
 - has been granted suspension of payments;
 - is involved in a debt adjustment arrangement;
 - has been placed under guardianship;
 - the opposite party fails to meet its obligations under the contract within 14 days after having been given written notice of default;
 - the agreed ship is not available due to unforeseen circumstances, and it is not possible for the entrepreneur, despite substantial efforts, to offer another equivalent ship in time;In addition, the entrepreneur may dissolve the contract if:
 - a situation as mentioned in Article 8, paragraphs 4, 5, 6, 7 or 8, occurs;
 - the number of registrations is less than the required minimum number of participants that he announced prior to the booking. The entrepreneur may then only dissolve the contract within the cancellation deadline if he stated this in the offer.
- If a party wishes to cancel or dissolve the contract, it must do so in writing, stating the reasons. The contract is regarded to have been dissolved on an extrajudicial basis after the letter of cancellation has been received, but in any case 5 days after the letter of cancellation is sent.
- If the cause of cancellation or dissolution can be attributed to the consumer and/or guests, then the resulting damage is payable by the consumer.
- In case of dissolution of the contract, the consumer may claim compensation for any damage that he has suffered. This is only possible if the failure can be attributed to the entrepreneur. This compensation for damage is limited to the price agreed for the boat trip.

ARTICLE 10 – LIABILITY

- The liability of the entrepreneur for damage is limited to three times the amount of the boat trip. This does not apply in case of personal injury or if the damage is caused by wilful conduct or gross negligence on the part of the entrepreneur.
- If the consumer has suffered damage in the form of lost travelling pleasure due to attributable failure on the part of the entrepreneur, the entrepreneur must then compensate the damage. This compensation is maximised by the amount of the travel sum.
- If the entrepreneur has carried out a service that is subject to a treaty or ordinance that contains an exclusion or limitation of his personal liability, the entrepreneur can then invoke this exclusion or limitation.
- If the consumer or a guest intends to claim compensation for damages, he must do so within the limitation period of two years.
- The entrepreneur is not required to pay damage compensation if the damage incurred by the consumer or guest is compensated by the insurer of the consumer or guest.
- If the entrepreneur can prove that damage has been caused fully or partly by wilful conduct or gross negligence on the part of the consumer and/or a guest, then the entrepreneur's liability is thereby fully or partly cancelled.
- The entrepreneur is not liable for loss of or damage to luggage or possessions (including cash, jewellery, electronic equipment or other valuables) if such loss or damage results from carelessness on the part of the consumer. Carelessness includes leaving valuables unattended on or in the ship.
- The consumer is liable for damage caused by himself and/or by guests/visitors who were on board of the ship at his invitation. This does not apply if the damage is attributable to an action or negligence on the part of the entrepreneur and/or the captain.

ARTICLE 11 – FORCE MAJEURE

- Force majeure includes any unforeseen event or situation:
 - which results in the performance of the contract being delayed or hindered; and
 - which the entrepreneur could not prevent; and
 - which is not attributable to the entrepreneur under any law, agreement or common view.
- Force majeure also includes serious damage (average) that the ship incurs during a boat trip, so that it is no longer usable for the agreed purpose. Such damage may not be due to circumstances that the entrepreneur could or should have foreseen or prevented.
- Force majeure also applies if the captain decides that it is not wise to sail because of weather circumstances, whether or not in combination with the nature of the ship and the group of persons on board.
- In case of force majeure affecting one of the parties, the other party may dissolve the contract. In such case the entrepreneur is entitled to compensation of the costs that he has made on behalf of the consumer. This pertains only to the costs that he incurred before the force majeure situation that led to the dissolution of the contract.

ARTICLE 12 – NON-CONFORMITY

- Non-conformity applies when one or more services are not carried out in accordance with the contract. In such case the entrepreneur is to ensure that the non-conformity is remedied, except when this:
 - is impossible; or
 - involves disproportionately high costs, in view of the scope of the non-conformity and the value of the services involved.
- The consumer must immediately notify the entrepreneur about the non-conformity.
- If the entrepreneur is obliged to remedy the non-conformity, the consumer decides within what reasonable period this must be done. If the entrepreneur fails to meet his obligation within the stated period, then the consumer may remedy the non-conformity personally and require repayment by the entrepreneur for the costs incurred.
- In case of non-conformity the consumer also has the right to:
 - terminate the contract without payment;
 - ask the entrepreneur for an appropriate price reduction;
 - ask the entrepreneur for appropriate compensation for damage.This right ceases when the entrepreneur is able to demonstrate that the non-conformity:
 - is attributable to the consumer or a guest, or to a third party who was involved in the performance of the contract; or
 - is attributable to unavoidable and extraordinary circumstances, to ensure that the consumer and/or the guests return on the date and at the location stated in the contract, then the costs of the necessary accommodation are payable by the entrepreneur. The entrepreneur pays a maximum of 3 overnight stays per consumer or guest.

ARTICLE 13 – AID AND ASSISTANCE

The entrepreneur is obliged to provide aid and assistance to the consumer and guests if they encounter problems. If the cause of these problems is attributable to the consumer and/or the guests, then the costs of aid and assistance are for their account.

ARTICLE 14 – INSOLVENCY

The entrepreneur shall take appropriate measures if he is unable, or no longer able, to meet his obligations towards the consumer due to financial problems. This involves measures to ensure that:

- his obligations are taken over by another party; or
- the consumer is refunded the amount of the boat trip. This would be the entire amount if the boat trip has not yet started, or an proportionate part of the amount if part of the boat trip has already taken place.

In addition, the entrepreneur is to take measures to ensure that the consumer and the guests are repatriated if necessary.

ARTICLE 15 – COMPLAINTS

- If the consumer or a guest has a complaint regarding the performance of the contract, then he should notify the entrepreneur and/or the captain of this on location as soon as possible. The latter will seek a solution together with the consumer or the guest. If this does not lead to a satisfactory solution, or if the complaint only arises after the boat trip, then the consumer must report the complaint to the entrepreneur within proper time either by letter or electronically. The consumer must adequately describe and explain the complaint.
- If the consumer has a complaint about an invoice, then this should preferably be notified to the entrepreneur by letter. This must be done within a proper time after receipt of the invoice. The consumer must adequately describe and explain the complaint in his letter.
- If the consumer does not submit his complaint in time, this may lead to loss of his right in that regard. If the fact that the complaint has not been lodged in time is not in all reasonableness attributable to the consumer, then he retains his rights.
- If it is clear that the complaint cannot be resolved by mutual consultation, then there is a dispute.

ARTICLE 16 – DISPUTE SETTLEMENT

- If the consumer and the entrepreneur have a dispute, either of them can submit this dispute to the Dispute Resolution Committee for Water Recreation, Bordewijklaan 46, PO Box 90600, 2509 LP The Hague (www.sgc.nl). The following conditions apply for this:
 - The dispute pertains to the formation or performance of a contract between the entrepreneur and the consumer.
 - The contract involves services or matters that the entrepreneur is meant to deliver, or has delivered, to the consumer.
 - The contract is subject to these general terms and conditions.
- The Dispute Resolution Committee will only handle a dispute if:
 - the consumer has first submitted the complaint to the entrepreneur;
 - the entrepreneur and the consumer have not been able to reach a solution;
 - the dispute has been submitted to the Dispute Resolution Committee within 12 months after the consumer submitted his complaint to the entrepreneur;
 - the dispute is presented to the committee in the form of a letter or in another form that is decided by the committee.
- The Dispute Resolution Committee will in principle only handle disputes which involve a financial interest of €14,000 at most. If the dispute involves a financial interest of more than €14,000, then the committee will only handle this if both parties explicitly agree to this.
- When a consumer submits a dispute to the Dispute Resolution Committee, the entrepreneur is then required to accept this. If the entrepreneur wishes to submit a dispute to the Dispute Resolution Committee, he must ask the consumer to notify him within 5 weeks whether he agrees to this. The entrepreneur must let the consumer know in connection with this that he can start court proceedings if the consumer does not respond within those 5 weeks.
- In handling the dispute and issuing a decision, the Dispute Resolution Committee follows the regulation that applies for the committee. This regulation will be sent to the consumer and/or the entrepreneur upon request. The verdicts by the Dispute Resolution Committee serve as binding decisions. A fee is charged for the handling of a dispute.
- Only the judge and the Dispute Resolution Committee have jurisdiction over disputes between the entrepreneur and the consumer.

ARTICLE 17 – PERFORMANCE BOND

- HISWA Vereniging guarantees that its members act in accordance with the binding decisions by the Dispute Resolution Committee. This does not apply if a member decides to submit the decision, within 2 months after it is issued, for a judicial review. If the decision remains intact after review by the court and if the verdict that is issued is irrevocable, then the guarantee takes effect again.
- The maximum amount paid by HISWA Vereniging to the consumer per binding decision is €10,000. This also applies if the consumer is entitled according to the binding decision to more than €10,000 from the entrepreneur. In that case the consumer receives €10,000 from HISWA Vereniging, and HISWA Vereniging will have an obligation to use its best efforts to ensure that the entrepreneur pays the rest.
- To claim entitlement to this performance bond, the consumer must apply for this in writing with HISWA Vereniging. He must also transfer his claim against the entrepreneur to HISWA Vereniging. If the amount claimed is more than €10,000, then the consumer in principle only needs to transfer the part of the claim below €10,000. But if the consumer wishes, he can also transfer the part of the claim above €10,000. HISWA Vereniging will then claim payment of this from the entrepreneur, in its own name and at own cost. If HISWA Vereniging succeeds in this, then it will pay the amount to the consumer.
- HISWA Vereniging issues no performance bond if one of the following situations occurs before the consumer has met the formal acceptance criteria for handling the dispute by the Dispute Resolution Committee:
 - Suspension of payments has been granted to the entrepreneur.
 - The entrepreneur is declared bankrupt.
 - The business activities of the entrepreneur have been effectively ended.

The decisive criterion for this situation is the date on which the termination of business activities is entered in the Commercial Register, or an earlier date as to which HISWA Vereniging can argue convincingly that the business activities were effectively ended.

What is meant by the formal acceptance criteria are the actions that the consumer must do to have the dispute handled by the Dispute Resolution Committee. These include payment of a complaint-filing fee, sending a completed and signed questionnaire and, if required, making a deposit.

ARTICLE 18 – CHOICE OF LAW

All disputes pertaining to this contract are subject to Dutch law, unless the national law of another country applies under imperative law.

ARTICLE 19 – DEVIATION FROM THESE TERMS AND CONDITIONS

Supplements to or deviations from these terms and conditions only apply if they are not counter to the interests of the consumer and when they are documented in writing or electronically such that the consumer can save them easily.

ARTICLE 20 – AMENDMENTS

Amendments by HISWA Vereniging of these general terms and conditions will always take place in consultation with ANWB and the Consumers' Association.